IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 75 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HIMATPURI AMRUTPURI GOSWAMI - Applicant(s)
Versus
STATE OF GUJARAT & 8 - Respondent(s)

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Appearance :
MR MB GANDHI for Applicant(s) : 1,
MR MR MENGDEY, APP for Respondent(s) : 1,
MR AM RAVAL for Respondent(s) : 2 - 9.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 04/10/2007

ORAL JUDGMENT

This petition has been filed by the original-complainant challenging an order dated 16.7.1998

passed by the Chief Judicial Magistrate, Himatnagar, as upheld by the order dated 11th December 1998 passed by the Additional Sessions Judge, Sabarkantha.

2. The petitioner had filed a complaint dated 27.10.94 before the learned Chief Judicial Magistrate, Himatnagar being Criminal Complaint No.194/94. In the complaint, it was stated, inter alia that his brother was employed as a teacher and at the time of his employment, he was forced to pay a sum of Rs.40,000/- by way of donation to the trustees of the school. Subsequently, further demand was made from the brother of the petitioner and he was being physically and mentally tortured. Eventually, unable to bear such a torture, he committed suicide on 6.10.1994 by consuming poison. The said complaint was filed before the Magistrate on 27.10.94 which was sent for inquiry under section 156(3) of the Criminal Procedure Code to the police. The police authorities, however, submitted 'C' summary to the learned Magistrate on 7.2.96. In the report, it was stated that the deceased had not made any complaint about the so-called ill-treatment to anybody. Though he was serving at a place where his close relatives like in-laws reside, he had never told about the ill-treatment to those relatives. The doctor who had treated the deceased just before his death had opined that he died due to falciperum malaria and not due to poisoning. FSL report also found no traces of poison in the body of the deceased. Though hand-writing expert had opined that one letter seem to be

containing hand-writing of the deceased, it was not possible to read the date of postal stamp of such a cover. On this basis, the police submitted report suggesting that the deceased did not die an unnatural death. This report was accepted by the learned Magistrate after proper hearing. The petitioner aggrieved by the decision of the learned Chief Judicial Magistrate, Himatnagar filed a revision application before the Sessions Court which revision application was also rejected. This petition is therefore filed.

3. Having heard the learned advocate Shri Gandhi for the petitioner and learned APP Shri Dipen Desai for the respondent State, I do not find any reason to interfere with the orders passed by the courts below. The police had carried out the investigation in a satisfactory manner. Significantly, though the deceased died on 6.10.94, the complaint to the Magistrate was filed on 27.10.94. The doctor who had treated the deceased before his death also was of the opinion that he died on account of falciparum malaria and not poisoning. FSL report also did not indicate any traces of poison in the body of the deceased. There was no evidence to indicate the theory of suicide and abetment thereof by the accused persons. When two courts have concurrently come to the conclusion that there is insufficient evidence to proceed against the accused, in exercise of power under Article 227 of the Constitution, I see no reason to take a different

view.

4. The petition is therefore, dismissed. Rule is discharged.

(Akil Kureshi, J.)

(vjn)